

REMARKS

In light of the following remarks and above amendments, reconsideration and allowance of this application are requested.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 USC §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Claims 4-7 and 121 and amended claims 1 and 120 are in this application. Furthermore, original claim 3 has been reintroduced as claim 123. Claim 3 was mistakenly canceled as the Examiner noted at paragraph 1 of the Office Action of November 7, 2003. Furthermore, the status of claims 8-119 and 122 is now canceled (instead of withdrawn) in order to expedite prosecution in this matter.

At paragraph 4 of the outstanding Final Office Action of April 7, 2004, the Examiner rejected claims 1, 4-7, 120 and 121 under 35 U.S.C. 103(a) as being unpatentable over Kurihara (U.S. Patent No. 6,069,956) in view of Yanagidaira (U.S. Patent No. 5,367,269). Applicants respectfully traverse the rejection.

Amended independent claim 1, recites in part, “A data multiplexing device which multiplexes a plurality of data elements...comprising...**encoder controlling means for assigning a different encoding bit rate to each of a plurality of encoders when encoding each of said plurality of data elements based on the complexity of each of said plurality of data elements.**” (Underlining and bold added for emphasis.)

The Examiner admits that Kurihara fails to teach “that different keys are used to scramble different parts of the program where the different parts are output substantially simultaneously.” The Examiner then relies on Yanagidaira to overcome the deficiencies of Kurihara. However, Yanagidaira’s disclosure does not overcome the deficiencies of Kurihara.

Yanagidaira does not teach or suggest the additional feature of amended independent claim 1. Yanagidaira teaches the use of video jamming signals and audio jamming signals corresponding to selected channels to be scrambled. However, Yanagidaira does not teach or suggest a data multiplexing device that comprises an encoder controlling means for assigning a different encoding bit rate to each of a plurality of encoders when encoding each of the plurality of data elements **based on the complexity of each of the plurality of unscrambled data elements**, as does amended independent claim 1. In fact, Yanagidaira does not mention any type of encoding means for encoding different data elements. Therefore, amended independent claim 1 is believed to be distinguishable over the applied combination of Kurihara and Yanagidaira.

Withdrawal of the rejection of amended independent claim 1 under 35 U.S.C. §103(a) is therefore respectfully requested.

For reasons similar to those described above with regard to amended independent claim 1, withdrawal of the rejection to amended independent claim 120 is respectfully requested.

Claims 4-7, and 121 are dependent from one of amended independent claims 1 and 120, and, due to such dependency are also distinguishable for the same reasons as the amended independent claims. Therefore, withdrawal of the rejection to claims 4-7 and 121 is respectfully requested.

Applicants respectfully request that the rejection of claims 1, 4-7, 120 and 121 under 35 U.S.C. §103(a) be withdrawn.


Applicants have further added new claim 123, which is original claim 3. Applicants submit that the 35 U.S.C. 103(a) rejection relied upon by the Examiner does not apply to claim 3, and submit that the rejection of claim 3 over 35 U.S.C. 103(a) would be improper.

It is to be appreciated that the foregoing comments concerning the disclosures in the cited prior art represent the present opinions of the applicants undersigned attorney and, in the event, that the Examiner disagrees with any such opinions, it is requested that the Examiner indicate where in the reference or references, there is the bases for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,

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